2002-34

>>> "Barnes, Janet C" <jbarnes@secrestwardle.com> 08/25/03 09:35AM >>>
Dear Mr. Davis,

Regarding the above-referenced proposed court rule amendments, I have no objection to the proposed amendments to MCR 7.204(H) and MCR 7.210. In fact, I welcome the proposed amendment to MCR 7.210(B)(1)(c) regarding transcript orders from appeals that relate solely to an order granting or denying summary disposition.

However, I join with the chorus of voices who object to the proposed amendments to MCR 7.212, reducing the time for filing the appellant's brief and eliminating the provision allowing parties to stipulate to a 28-day extension of time to file their appeal briefs. Like many others who have commented, I do not see that the one week reduction in time to file the appellant's brief will have any significant reduction in the Court of Appeals' backlog. I do not think that the elimination of the 28-day stipulated extension will have the desired result either. What it will do is eliminate any vestige of control that appellate practioners will have over their work. Currently, we have very little control. That is because we do not have any control over when the trial courts will enter orders, when the Court of Appeals will schedule oral arguments or when the Court of Appeals will issue a decision.

I work for a fairly large litigation firm. While some of the attorneys in our municipal department handle there own appeals, there is only one other appellate attorney in our firm. Together the two of us handle the appeals from approximately about 60 attorneys, which at times means that we are already stretched to our limits with deadlines.

I make every effort not to request or use the stipulated extension of time, but there are times when I need to do so because of the volume of appeals that I am handling. Filing a motion is not a great option because it requires us to take time away drafting the briefs to draft and file the motion and such motions will also add to the cost of the appeal.

Furthermore, there is no guarantee the motion would be granted because the Chief Judge of the Court of Appeals has indicated that the Court will be strictly enforcing the "good cause" requirement in the proposed court rule. At a presentation the Chief Judge of the Court of Appeals made, he indicated that good cause would not include such things a prepaid vacation. He indicated that we needed to make sacrifices for our clients. I think that we and our families already do so.

Finally, I believe there is truth to the adage that "quality takes time."

While the Court of Appeals may be getting opinions out quicker, I have noticed an appreciable decline in the quality of some of the opinions, even opinions that have been favorable to my clients. Poorer quality briefing likely will result in more poorer quality opinions from the Court of Appeals. In addition, poorer quality opinions from that Court likely will translate into more work for the Michigan Supreme Court. If more applications for leave to appeal are filed in the Michigan Supreme Court, that will also result in more delay, instead of less delay in the ultimate resolution of the appeal.

I appreciate your consideration of my comments. I hope that the Court will not adopt the proposed amendments to MCR 7.212.

Janet Callahan Barnes